

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.220 of 2019**

1. Bibi Sabnam Ara @ Sabnam Ara, W/o- Ale Ahmad, Resident of Mohalla-Noor Gola West, P.S.- Nagar Hajipur, Dist- Vaishali
2. Ale Ahmad, S/o- Late Moh. Manjurul Haque, Resident of Mohalla-Noor Gola West, P.S.- Nagar Hajipur, Dist- Vaishali

... .. Petitioners-Judgment Debtor

Versus

Moh. Hasan Imam, S/o- Late Fakhruddin, R/o Mohalla-Bagtaj alias Pokhara Mohalla, P.S.- Nagar Hajipur, District- Vaishali

... .. Decree Holder-Respondent

Appearance :

For the Appellant/s : Mr. Sanjeev Kumar, Advocate
For the Respondent/s : Mr.

**CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT**

Date : 10-05-2019

Heard learned counsel for the petitioners.

2. This application under Article 227 of the Constitution of India has been filed by the petitioners for quashing the order dated 03.10.2018 passed in Execution Case No.1 of 2017 by the learned Sub Judge-XI, Vaishali, Hajipur whereby he has refused to stay the proceedings of Execution Case No.1 of 2017.

3. Learned counsel for the petitioners submitted that to avoid multiplicity of proceedings, the execution court ought to have stayed the Execution Case No.1 of 2012 till the disposal of



Miscellaneous Case No.5 of 2017. He contended that the impugned order passed by the court below is totally arbitrary, illegal and not sustainable in the eye of law.

4. The facts of the case, in brief, are that the respondent had filed Eviction Case No.4 of 2010 before the learned Sub Judge-1st, Vaishali, Hajipur against the petitioners on account of default in payment of rent. The petitioners appeared in the said eviction case and filed their written statements. While the trial of the case was going on, it was dismissed on 16.08.2014 for want of prosecution. Subsequently, the eviction case was restored to its original file by order dated 14.01.2015 on the application filed by the respondent. Six witnesses were examined on behalf of the respondent. However, the petitioners did not adduce any evidence. On 28.10.2016, the suit was decreed on contest. The petitioners were directed to vacate the suit premises within sixty days from the date of the order and pay the arrears of rent at the rate of Rs.300/- till the date of vacation, as indicated in the body of the judgment within the same stipulated period. On not doing so, the respondent was made entitled to take appropriate legal recourse by process of the court. After the aforesaid decree was passed, the petitioners did not vacate the suit premises within the stipulated period of sixty days from the date of the order whereafter an



execution case vide Execution Case No.1 of 2017 was filed. In the said execution case, an application was filed by the petitioners that a miscellaneous case has been filed under Order 9 Rule 13 of the Code of Civil Procedure before the court of Sub Judge-11, Vaishali at Hajipur for vacating the *ex parte* decree and, therefore, the execution case be stayed. The said prayer of the petitioners has been declined by the execution court vide impugned order dated 03.10.2018.

5. Being aggrieved by the aforesaid order dated 03.10.2018, the instant application has been filed by the petitioners.

6. Having heard learned counsel for the petitioners and perused the material on record, I am of the opinion that no illegality can be found in the order passed by the court below. It has rightly held that a decree holder can not be prevented from taking fruits of the decree for a long time. The conduct of the petitioners disentitles them from praying for stay of the execution case. They have chosen not to appear before the court despite of the fact that their lawyer was informed by the trial court in the suit.

7. In that view of the matter, since the order impugned passed by the execution court is neither perverse nor without jurisdiction, I am not inclined to interfere with the same in exercise



of supervisory jurisdiction under Article 227 of the Constitution of India.

8. The application is dismissed.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	14.05.2019
Transmission Date	NA

